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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/520,961	10/25/2005	Olivier Carli	38918	4903
39313	7590	08/07/2006	EXAMINER	
CARL M. NAPOLITANO, PH.D. ALLEN, DYER, DOPPELT, MILBRATH & GILCHRIST, P.A. 255 SOUTH ORANGE AVE., SUITE 1401 P.O. BOX 3791 ORLANDO, FL 32802-3791			WOODALL, NICHOLAS W	
			ART UNIT	PAPER NUMBER
			3733	
DATE MAILED: 08/07/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/520,961	CARLI, OLIVIER	
	<b>Examiner</b>	<b>Art Unit</b>	
	Nicholas Woodall	3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-9 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 11 January 2005 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 1/11/2005.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Specification***

1. Applicant is reminded of the proper content of an abstract of the disclosure.

A patent abstract is a concise statement of the technical disclosure of the patent and should include that which is new in the art to which the invention pertains. If the patent is of a basic nature, the entire technical disclosure may be new in the art, and the abstract should be directed to the entire disclosure. If the patent is in the nature of an improvement in an old apparatus, process, product, or composition, the abstract should include the technical disclosure of the improvement. In certain patents, particularly those for compounds and compositions, wherein the process for making and/or the use thereof are not obvious, the abstract should set forth a process for making and/or use thereof. If the new technical disclosure involves modifications or alternatives, the abstract should mention by way of example the preferred modification or alternative.

The abstract should not refer to purported merits or speculative applications of the invention and should not compare the invention with the prior art.

Where applicable, the abstract should include the following:

- (1) if a machine or apparatus, its organization and operation;
- (2) if an article, its method of making;
- (3) if a chemical compound, its identity and use;
- (4) if a mixture, its ingredients;
- (5) if a process, the steps.

Extensive mechanical and design details of apparatus should not be given.

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

3. The abstract of the disclosure is objected to because it uses a phrase that replies, e.g. "This invention concerns". Also the abstract is written in claim for instead of narrative form. Correction is required. See MPEP § 608.01(b).

4. The disclosure is objected to because of the following informalities: the applicant uses reference number 1 for two different parts of the invention. In paragraph 16 line 2 the applicant uses reference 1 to denote the bone anchoring device. In line 4 of paragraph 16 the applicant uses reference number 1 to denote the bone anchoring element. The examiner changing the reference number in line 4 to reference number 2. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 3-6, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Taylor (U.S. 6,267,765).

Regarding claim 1, Taylor discloses a device comprising a bone anchor element (4), spherical articulation between the anchoring element (4) and a threaded shaft (7), and a rotational linkage means (11 and 12) as shown in Figures 1 and 2 below. The bone anchor element is provided with a head (5). A means for spherical articulation is provided between the head (5) of the anchoring element and a threaded shaft (7). A rotational linkage means (11 and 12) is also provided between the bone anchor element

(4) and a threaded shaft (7). Regarding claim 3, Taylor discloses a device wherein the rotational linkage includes a female geometry (12) and complementary male geometry (11). Regarding claim 4, Taylor discloses a device wherein one of the geometrical forms is located on the bone anchor element (4) and the other is located on the threaded shaft (7). Regarding claim 5, wherein one of the geometrical shapes is provided on the end face of the bone anchor element (4). The geometrical shape (12) extends within an open housing (57) in the head of the bone anchor (4) for receiving the end (11) of the threaded shaft (7). The ends (11 and 12) of the bone anchor (4) and the threaded shaft (7) form a ball and socket joint to form the spherical articulation between the two elements. Regarding claim 6, Taylor discloses a device wherein the transverse face (bottom surface of element 14) of the ball and socket joint and the end face (upper face of element 57) of the bone anchor (4) are separated by a distance to allow for multiple orientations of the threaded shaft (7). Regarding claim 9, Taylor discloses a device wherein the receiving head (5) forms a grip nut for a screwing tool.

Figure 1

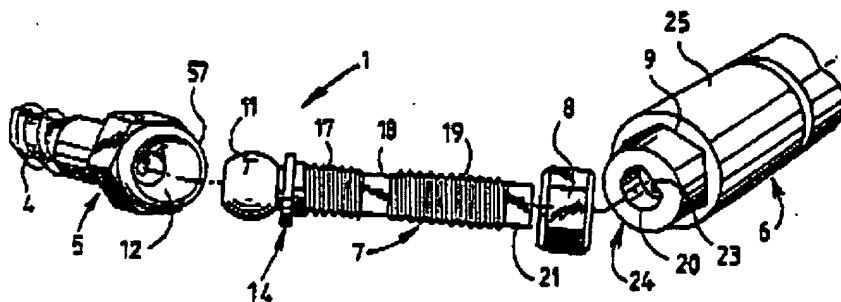
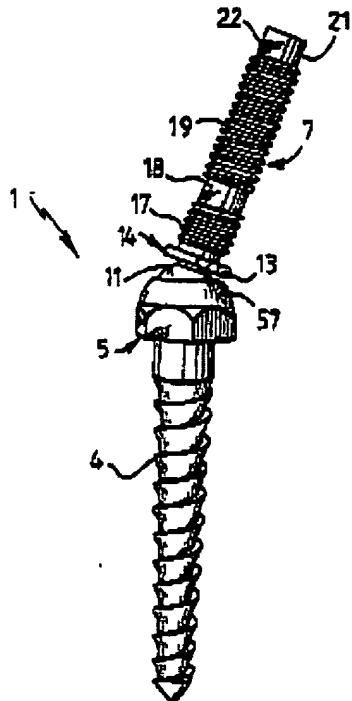


Figure 2



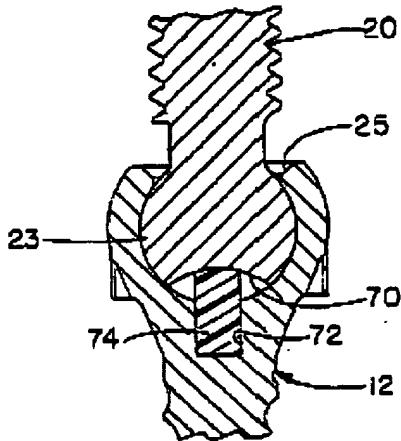
7. Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Altarac (U.S. Publication 2004/0006342).

Regarding claim 1, Altarac discloses a device that comprises a bone anchor (12), spherical articulation between the bone anchor (12) and a threaded shaft (20), and a rotational linkage (70 and 72) means between the bone anchor (12) and the threaded shaft (20) as shown in Figure 3 below. The bone anchor (12) is provided with a head (18). A means for spherical articulation is provided between the head (18) of the anchor (12) and the threaded shaft (20). A rotational linkage means (70 and 72) is also provided between the head (18) of the anchor (12) and the threaded shaft (20).

Regarding claim 2, Altarac discloses a device wherein the rotational linkage means (70 and 72) are located outside of the spherical articulation means (23 and 24). Regarding

claim 3, Altarac discloses a device wherein the rotational linkage means comprises a female geometry (70) and a complementary male geometry (72). Regarding claim 4, Altarac discloses a device wherein one of the geometrical forms is located on the bone anchor (12) and the other geometrical form is located on the threaded shaft (20). Regarding claim 5, Altarac discloses a device wherein one of the geometrical forms (74) is provided on an end face of the bone anchor (12). The geometrical form (74) extends within an open housing (24) provided in the head (18) of the anchor (12) and receives the end (23) of the threaded shaft (20) to form a ball and socket joint for the spherical articulation. The other geometrical form (70) is located on a transverse face of the ball and socket joint (23). Regarding claim 6, Altarac discloses a device wherein a transverse surface (70) of the ball and joint socket is located a distance from a end face (upper face of element 25) of the bone anchor (12) to allow multiple orientations of the threaded shaft (20). Regarding claim 7, Altarac discloses a device wherein at least one of the transverse faces of the ball and socket joint (23 and 24) or the end faces of the bone anchor (12) have a convex shape. Regarding claim 8, Altarac discloses a device wherein the male geometrical form (74) is on the bone anchor (12) and the female geometrical form (70) is located on the ball and socket joint (23).

Figure 3



### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892 for cited references the examiner felt were relevant to the application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas Woodall whose telephone number is 571-272-5204. The examiner can normally be reached on Monday to Friday 8:00 to 5:30 EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NWW



EDUARDO C. ROBERT  
SUPERVISORY PATENT EXAMINER